

**International Crimes Tribunal-1**  
**Old High Court Building, Dhaka, Bangladesh.**

**ICT-BD Case No.02 OF 2014**

**Chief Prosecutor-Versus- Syed Md. Hachhan alias Syed Md. Hasan  
alias Hachhen Ali**

**Present:**

**Mr. Justice M. Enayetur Rahim, Chairman**  
**Mr. Justice Jahangir Hossain, Member**  
**Mr. Justice Anwarul Haque, Member**

**Order No.05**

**Order dated 11.11.2014**

Mr. Mohammad Ali, Advocate

Mr. Abul Kalam Azad, Advocate

Mr. Moklesur Rahman, Advocate

.....for the prosecution

Mr. Md. Abdus Sukur Khan, Advocate

.....for State defence

**Decision on charge framing matter**

Accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali has been absconding from the beginning of its inception. So, the trial has been started in absentia against the accused after complying with the provisions of Rule 31 and Rule 32 of the Rules of Procedure, 2010.

Today is fixed for passing decision on charge framing matter and as such the record is taken up for order. Before giving decision on charge framing matter, we would prefer to provide a brief milieu and context of the case, its history, and the arguments presented by both prosecution and defence before this Tribunal.

**1. Introduction and Formation of the Tribunal**

This International Crimes Tribunal-1 [hereinafter referred to as the "Tribunal"] was established under the International Crimes

(Tribunals) Act enacted in 1973 [hereinafter referred to as the Act] by Bangladesh Parliament to provide for the detention, prosecution and punishment of persons responsible for genocide, crimes against Humanity, war crimes, and crimes committed in the territory of Bangladesh, in violation of customary international law, particularly between the period of 25<sup>th</sup> March and 16<sup>th</sup> December, 1971. However, no Tribunal was set up and as such no one could be brought to justice under the Act until the government established the Tribunal on 25<sup>th</sup> March, 2010.

## **2. Historical Context**

In August, 1947, the partition of British India based on two nation theory, gave birth to two new states, one a secular state named India and the other the Islamic Republic of Pakistan. The western zone was eventually named West Pakistan and the eastern zone was named East Pakistan, which is now Bangladesh.

In 1952 the Pakistani authorities made an attempt to impose Urdu as the only State language of Pakistan ignoring Bangla, the language of the majority population of Pakistan. The people of the then East Pakistan started movement to get Bangla recognized as a state language thus marking the beginning of language movement that eventually turned in to the movement for greater autonomy and self-determination and eventually independence.

In the general election of 1970, the Awami League under the leadership of Bangabandhu Sheikh Mujibur Rahman became the majority party of Pakistan. Despite this overwhelming majority, Pakistan Government did not hand over power to the leader of the

majority party as democratic norms required. As a result, movement started in this part of Pakistan and Bangabandhu Sheikh Mujibur Rahman in his historic speech of 7<sup>th</sup> March, 1971, called on the people of Bangladesh to strive for independence if people's verdict is not respected and power is not handed over to the leader of the majority party. On 26<sup>th</sup> March, following the onslaught of "Operation Search Light" by the Pakistani Military on 25<sup>th</sup> March, 1971 Bangabandhu declared Bangladesh independent immediately before he was arrested by the Pakistani authorities.

In the War of Liberation that ensued, all people of East Pakistan wholeheartedly supported and participated in the call to free Bangladesh but a small number of Bangalees, Biharis, other pro-Pakistanis, as well as members of a number of different religion-based political parties joined and/ or collaborated with the Pakistani invading force to actively oppose the creation of independent Bangladesh and most of them committed and facilitated the commission of atrocities in the territory of Bangladesh. As a result, 3 million [thirty lakh] people were killed, more than 2,00,000 [two lakh] women raped, about 10 million [one crore] people deported to India as refugees and million others were internally displaced. It also experienced unprecedented destruction of properties all over Bangladesh.

The Pakistan Government and the military with the help of some pro-Pakistani leaders setup a number of auxiliary forces such as the Razakars, the Al-Badr, the Al-Shams, the Peace Committee etc, essentially to collaborate with the military in identifying and

eliminating all those who were perceived to be sympathized with the liberation of Bangladesh, individuals belonging to minority religious groups especially the Hindus, political groups belonging to Awami League and other pro-Independence political parties, Bangalee intellectuals and civilian population of Bangladesh. Undeniably the road to freedom for the people of Bangladesh was arduous and torturous, smeared with blood, toil and sacrifices. In the contemporary world history, perhaps no nation paid as dearly as the Bangalees did for their emancipation.

### **3. Brief Account of the accused**

Accused Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, son of late Syed Muslehuddin and late Syeda Fatima Benu of village Machhahata (Peer Bari), Police Station and District Brahmanbaria was born on 18.08.1947. His father late Syed Muslehuddin was the Vice-President of Pakistan Democratic Party (PDP) and also the Chairman of Peace committee of the then Kishorganj Sub-Division in 1971 during the Liberation War.

During the Liberation War in 1971 he joined the Rajakar Bahini, an auxiliary force of Pakistani occupation army and became the Thana commander of Rajakar Bahini of Tarail Police Station under the then Kishorganj Sub-Division and being a local leader of Rajakar Bahini committed various crimes against Humanity in 1971 in different areas under the Tarail Police Station. For his such atrocious acts in 1971, locally he was known as Rajakar Daroga [police].

#### **4. Procedural History**

Upon hearing an application filed by the learned Chief Prosecutor, the Tribunal by its order dated 03.04.2014 issued warrant of arrest against accused Syed Md. Hachhen alias Syed Md. Hasan alias Hachhen Ali. But the law enforcing agencies have failed to secure his arrest till today. In the meantime the learned Chief Prosecutor submitted Formal Charge under section 9(1) of the Act in the Tribunal on 24.08.2014 on the basis of Investigation Report of the Investigation Agency. It has been alleged in the Formal Charge that during the War of Liberation in 1971, the accused as a local leader of Rajakars had committed crimes against Humanity, genocide including abetting, aiding, participating and providing moral support to commit such crimes in different places of Tarail Police Station under the then Kishoregonj Sub-Division. The Tribunal on 24.08.2014 on perusal of Formal Charge, statement of witnesses and the documents submitted by the Prosecution, took cognizance of offences as specified in section 3(2) read with section 4(1) of the Act against the accused. The Tribunal by the same order directed the Registrar of the Tribunal to take necessary measures as per provision of Rule 31 of the Rules of Procedure. Accordingly, it was complied with as it appears from order No.2 dated 15.09.2014. As the accused did not turn up after publication of its proclamation of arrest in the two daily national news papers, the Tribunal by its order dated 15.09.2014 appointed Mr. Md. Abdus Sukur Khan, Advocate of Bangladesh Supreme Court as State defence counsel to defend absconding accused Syed Md. Hachhan

alias Syed Md. Hasan alias Hachhen Ali and fixed on 22.10.2014 for hearing on charge matter.

The prosecuton was then directed to furnish copies of Formal Charge and documents submitted therewith which it intends to rely upon for supplying the same to the learned State defence lawyer for preparation of the defence.

Mr. Mohammad Ali, Mr. Md. Moklesur Rahman and Mr. Abul Kalam, the learned prosecutors have made submissions in support of framing charge against the accused in the light of the Formal Charge together with statements of witnesses and documents submitted therewith. While Mr. Md. Abdus Sukur Khan, the learned State defence counsel by filing an application for discharge of the accused, made submissions in support of discharging the accused from the charges brought against him.

##### **5. Submission advanced by the Prosecutor**

The learned prosecutors drawing our attention to the facts set out in the Formal Charge constituting the offences allegedly committed by the accused during 1971 War of Liberation, portrayed the context in brief to substantiate the organizational plan and policy in execution of which the local pro-Pakistani persons belonging to fundamentalist Islamic political groups, Peace Committee, Al-Badr Bahini, Rajakar Bahini and auxiliary forces took part in committing the offences as crimes against Humanity and also substantially aided and abetted the Pakistani occupation force in committing horrific atrocities. It has been submitted that commission of offences of crimes against Humanity and genocide in 1971 during the Liberation War is

undeniable facts of common knowledge that deserves judicial notice. It has also been submitted that the statement of witnesses, documents and materials collected during investigation abundantly established that the accused participated, abetted, facilitated the commission of offences as stated above atrocities and also had complicity to commit such offences in Tarail area under the then Kishoreganj Sub-Division in 1971. The accused had also physical participation in the commission of offences narrated in the Formal Charge, apart from abetment and complicity in committing offences.

It has been further submitted by the learned prosecutors that prosecution has sufficiently explained the delay of 42 years in bringing prosecution against the accused in the Formal Charge, moreover, a criminal proceeding can not be barred by limitation which is universally accepted by all. It has also been submitted that the accused as influential member of Razakar Bahini had committed genocide and crimes against Humanity and he also directly participated in the commission of offences and as such he is also liable under section 4(1) of the Act.

#### **6. Submission advanced by the State defence**

Mr. Md. Abdus Sukur Khan, the learned State-defence Counsel for the accused has submitted that the allegations set up in the Formal Charge do not disclose or state specificity of general particulars and the required elements to constitute the offences of genocide and crimes against Humanity. The Formal Charge is based on vague and unspecified allegations and it does not disclose the mode of participation of the accused with the alleged atrocious acts.

Mr. Khan has further submitted that apart from the Act of 1973 there had been the Collaborators Order 1972 meant to prosecute and try the local persons who allegedly collaborated with the Pakistani army in committing offences. But the accused person was not prosecuted under the Collaborators Order 1972. Thus, it may be validly said that the 1973 Act was enacted only to prosecute those 195 Pakistani armed force members. This prosecution is politically motivated one.

The learned State defence counsel has further submitted that the prosecution against the accused has been brought after 42 years without reasonable explanation of such long delay and as such, the case is hopelessly barred by limitation; the alleged offences namely torture, abduction, confinement, conversion and deportation had no existence in the International customary laws before 1971 and as such no charge about the said offences can be legally framed against the accused person. Learned defence Counsel has further contended that there was no document submitted by the prosecution as to whether the accused was the commander of Razakar Bahini of Tarail Police Station and he abetted and helped the auxiliary forces including the Rajakar Bahini in committing offences. It is a motivated case brought against him by the prosecution at the instance of interested quarter. The accused person in no way is liable under section 4(1) of the Act.

11. Before going into discussion and evaluation of the materials on record, it is needed to be mentioned here that this Tribunal has already resolved some common legal issues agitated by the defence in the cases of the Chief Prosecutor vs. Delwar Hossain Sayeedi [ICT-BD



Case No. 01/2011], The Chief Prosecutor Vs. Professor Ghulam Azam [ICT-BD case No. 06/2011], the Chief Prosecutor Vs. Salauddin Quader Chowdhury [ICT-BD Case No. 02/2011] and the Chief Prosecutor Vs. Motiur Rahman Nizami [ICT-BD Case No.03 of 2011] . Apart from these, the Appellate Division of our Supreme Court in the cases of Abdul Quader Mollah Vs. Government of Bangladesh vis-a-vis has also decided the legal issues involved in the cases under the Act of 1973.

**The settled laws/ issues by the Appellate Division and the Tribunal are as follows:**

- i. customary International Law [CIL] shall not be applied if it is contrary to the Act of 1973;
- ii. the inordinate delay in commencing any proceedings under the Act of 1973 *ipso facto* can not be a ground to doubt the truth or veracity of the prosecution case;
- iii. by the amendment of section 3(1) of the Act of 1973 through Act No.LV of 2009 the jurisdiction of the Tribunal has been extended to try and punish 'any individual' or 'group of individuals' besides any member of any armed, defence or auxiliary forces, irrespective of his nationality who has committed crimes against Humanity mentioned in the Act of 1973;
- iv. the Act of 1973 is a protected law and the moment, section 3(1) was amended by way of substitution, it became part of the Statute and it got the protection of any

legal challenge to be void or unlawful or even to have become void or unlawful in view of the provision of Article 47(3) of our Constitution;

- v. the clemency given to the admitted prisoners of War, pursuant to the tripartite agreement of 1974, in no way, either match the Act of 1973 or any of its provisions ineffective, invalid or void;
- vi. mere failure of the successive governments to act in accordance with the Act of 1973 for last more than forty years, in no way, gave any right to the accused to be exonerated from being tried for the commission of crimes against Humanity as mentioned in section 3(2) of the Act;
- vii. in the Act of 1973, no limitation has been prescribed for initiating proceedings against any individual or group of individuals or organization or any member of any armed, defence or auxiliary forces irrespective of his nationality for the commission of crimes mentioned in section 3(2) of the Act of 1973;
- viii. the Collaborators Order 1972 was a different legislation aiming to prosecute the persons for the offences punishable under the Penal Code, were scheduled in the Collaborators Order 1972, while the Act of 1973 has been enacted to prosecute and try the persons for crimes against Humanity, genocide and other crimes committed in violation of customary international law [CIL] and as

such there is no scope to characterize the offences indulging in the Collaborators Order 1972 to be the same offences as specified in the Act of 1973.

In view of the above proposition of law and considering the submissions advanced by the respective parties, we are of the opinion that the application seeking discharge of the accused having no substantial merit, rather, we have found prima facie allegations from the materials on record and facts narrated in the Formal Charge and therefore, the application for discharge is hereby rejected.

We have perused the Formal Charge, statement of witnesses along with other documents submitted by the prosecution, therefore, we are initially convinced that there are sufficient and substantial materials before this Tribunal to presume that accused Syed Md. Hachhan alias Syed Md. Hassan alias Hachhen Ali committed offences of crimes against Humanity and genocide during the War of Liberation in 1971 as specified under section 3(2) of the Act for which he is criminally liable and also liable under section 4(1) of the Act. Since we find that there are prima facie allegations against the accused, the charges are thus framed against him in the following manner:

**Charges**

**We,**

**Justice M. Enayetur Rahim, Chairman**

**Justice Jahangir Hossain and**

**Justice Anwarul Haque, Members**

**of the International Crimes Tribunal-1**

do hereby charge you Accused Syed Md. Hachhan alias Syed Md. Hassan alias Hachhen Ali, son of late Syed Musleh Uddin and Syeda Fatima Banu, Village-Masihata (Peer Bari), Police Station & District-Brahmanbaria as follows:

**Charge no.01**

That on 27 April, 1971 at about 11.00 A.M, you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Rajakars, accompanied by other Rajakars and Pakistani army, having surrounded the house of Hasan Ahmed alias Hachu Bepari of village Sachailpurbopara under Tarail Police Station, presently District-Kishoreganj plundered six houses of said Hasan Ahmed alias Hachu Bepari and one house of Sadot Ali alias Kontu Miah and then set them on fire by gun-powder.

Therefore, you are hereby charged for abetting, contributing, facilitating and complicity in the commission of offences of plundering and arson [other inhumane acts] as crimes against Humanity as specified in sections 3(2)(a)(g)(h) and 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

**Charge no.02**

That on 23 August, 1971 at about 2.00/2.30 A.M, you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Rajakars, accompanied by other Rajakars and Pakistani army, having surrounded the house of Tofazzol Hossain Bhuiyan alias Lalu Bhuiyan at village Konabhawal confined him along with Abdul Zahid Bhuiyan and his wife Quamrunnessa and plundered their houses. At that time you tortured said Abdul Zahid Bhuiyan on his forehead by a rifle-butt.

At one stage while Tofazzol Hossain Bhuiyan alias Lalu Bhuiyan was fleeing away towards north of his house, you having chased him fired shots at him and then he being injured by shots, got down into their pond and then you shot him dead in the pond. Thereafter, you and your accomplices having taken other confined persons to the army camp, situated in the Dak bungalow of Kishoreganj, confined and interrogated them therein and eventually released them.

Therefore, you are hereby charged for abetting, contributing, facilitating and complicity in the commission of offences of abduction, confinement, torture, murder and plundering [other inhumane acts] as crimes against Humanity as specified in section 3(2)(a)(g)(h) and 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

**Charge no.03**

That on 9 September, 1971 around 01:00 P.M under the leadership of you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Rajakars, along with 15-20 armed Rajakars made an attack on Palpara of Shemulhati village under Tarail police station of the then Kishoregonj Sub-Division [Presently Kishoregonj District]. Having raided house to house in the village you and your accomplices apprehended Okroor Chandra Paul along with ten others who were split into two groups and thereafter Okroor Chandra Paul and Shoroth Chandra were killed by your gun shots near the house of Jogadish Paul and ten others in a queue being tied near Mir Bari, were also shot by you with intent to destroy, in whole or in part, the Hindu religious group and as a result nine of them died on

the spot. Only victim Shurendra Chandra paul made an attempt to flee away and concealed himself in the paddy field but other Rajakars killed him in that hiding place by gun shots. Rajakars plundered many houses of that Palpara and set them on fire. Thereafter, you and your accomplices moved towards Tarail from the scene at about 03.30 P.M and later, locals floated all dead bodies into the water of a bill at Verontala near western side of the village.

Therefore, you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali are hereby charged for abetting and facilitating the commission of offences of genocide, murder, abduction and other inhumane acts [pillage and arson] as crimes against Humanity as specified in sections 3(2)(a)(c)(g)(h) and 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

**Charge no.04**

That on 27 September, 1971 around 08:00 P.M when some Hindu religious people including eight males and 4/5 females along with some infants reached Markan Bill located at Borgaon under Tarail police station of Kishoregonj Sub-Division by a rented boat from Paikura village of Kendua police station under Netrokona Sub-Division in order to go to India as refugees, then you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali along with your accomplice Rajakars cordoned them there and forcefully dragged them into your boat and took them onto Balongka street under Tarail police station. Meanwhile, helmsmen of the boat dived into the water to save their

lives. Thereafter, being enraged you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali forced Shotish Chandra, Shoresh Chandra Gosh and Jogadish Chandra Gosh to get down from the boat and kept them in a queue and shot them from behind with intent to destroy, in whole or in part, the Hindu religious group, who died on the spot. Upon your direction your accomplices killed remaining five male members one after another by gun shots on the street and snatched away rented boat, ornaments and money in cash from the female members and confined them along with infants at Tarail police station. The female members and infants were freed from Tarail police station after four days at the blessing of Paikura Union Parishad Chairman Mr. Abdur Rahman Bhuiyan.

Therefore, you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali are hereby charged for abetting and facilitating the commission of offences of genocide, murder, abduction, confinement and other inhumane act [plundering] as crimes against Humanity as specified in sections 3(2)(a)(c)(g)(h) and 4(1) of the International Crimes (Tribunals) Act, 1973 which are punishable under section 20(2) of the Act.

#### **Charge no.5**

That on 8 October, 1971 at about 12.00 noon, you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali, a local leader of Rajakars, along with your accomplice 15/20 Rajakars having gone to village Araiura under Tarail Police Station of the then Kishoregonj Sub-Division surrounded the house of Kamini Kumar Ghosh[65], and

apprehended him, and thereafter you sent some of your accomplices to the house of Jibon Thakur, at village Chikni situated at the western side of the canal, and your accomplices having captured him from his house brought him to you, and thereafter both Kamini Kumar Ghosh and Jibon Thakur were taken by you in the open place, in front of the house of Monindra Kishor Sarker, and then you killed both of them by gun shots. Your accomplice Rajakars also looted various valuable goods including the gold made ornaments from the house of Jibon Thakur.

Therefore, you are hereby charged for abetting, facilitating and complicity in the commission of offences of abduction, murder and other inhumane act [looting] as crimes against Humanity as specified under sections 3(2)(a)(g)(h) and 4(l) of the Act of 1973 which are punishable under section 20(2) of the said Act.

**Charge no.6**

On 11 December at about 03.00/ 03.30 A.M under the leadership of you Syed Md. Hachhan alias Syed Md. Hasan alias Hachhen Ali 30/40 Rajakars along with some Pakistani army men surrounded Pacchimpara of village Sachail under Tarail Police Station, as the people of that village supported the Liberation War, and then set fire on about 100 houses of that village, and at that time fire caught on the body of Md. Abdur Rashid, a villager, and he started running towards north to save his life but you, having chased him killed by gun shot near the paddy field of Shah Alam, about 300 yards away from his house.



Therefore, you are hereby charged for abetting contributing, facilitating and complicity in the commission of offences of murder and other inhumane Act [arson] as crimes against Humanity as specified under sections 3(2)(a)(g)(h) and 4(1) of the Act of 1973 which are punishable under section 20(2) of the said Act.

The charges framed by the Tribunal is read over in the open court but these could not be explained to the accused as he is absconding since inception of the case.

Let the case be fixed on 07.12.2014 for opening statement and examination of prosecution witnesses. The trial shall be continuing on every working day until further order. The State defence counsel is directed to submit a list of witnesses along with documents, if any, which the defence intends to rely upon as required under section 9(5) of the Act.

**(M. Enayetur Rahim, Chairman)**

**(Jahangir Hossain, Member)**

**(Anwarul Haque, Member)**